



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants seeking an order for money owed or compensation for damage or loss under the Act, the regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to a monetary order?

Background and Evidence

The tenancy began on or about August 1, 2007. Rent in the amount of \$950.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy to the tenants on January 14, 2012. The tenants were able to secure a new residence earlier than the effective date of the notice and vacated on March 3, 2012.

The landlord gave the following testimony; the notice was given on the basis that the landlord would be moving into the unit with her son, on February 25, 2012 a wind storm caused some damage to the main power pole to the home and was subject of an insurance claim, the landlord paid for alternative accommodations for the tenants until the tenant's were able to return on February 28, 2012, on March 20, 2012 the landlords father became ill and required the landlord to stay with him to give him round the clock care, the landlord testified that the insurance company did not complete the required repairs until September 6, 2012, the landlord rented out the suite for September 15,

2012, the landlord is still the primary caregiver for her father and does intend to move into the unit when he gets better, the landlord testified that she was acting in good faith and had every intention of moving into the unit but was unable to because of the ongoing insurance claim and her fathers' poor health.

The tenants gave the following testimony; the tenant's testified that their relationship was problem free for the first several years of their tenancy but when they asked the landlord to fix a leaky roof and mold issues; the landlord would reply that she didn't have the money and became frustrated with the tenants, the tenants feel that the notice was given to them because of that frustration and not in good faith, the tenants testified that the repairs to the electrical system were completed in a matter of days and dispute the landlords claim that it took six months, the tenants were not provided any of the landlords evidence for this hearing, the tenants are seeking the equivalent to two months' rent as compensation as outlined in the Act.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlord submitted a letter from the insurance company to support their claim that they were unable to move because of the ongoing repairs, however the address listed on the letter from the insurance company does not match that of the subject address. The landlord stated the insurance company made a mistake and that they have a corrected copy in their possession, however that copy was not provided to the tenant or the Branch. The tenant's were clear and consistent throughout the hearing that the repairs were dealt with within a matter of days. The landlord was unable to provide sufficient and accurate documentation to support their position that the repairs took longer than that. The landlord did not act on the basis to which the notice was given. Based on all of the above and on the balance of probabilities, I find that the tenant's have proven their claim and are entitled to compensation in the amount equivalent to two months' rent = $\$950.00 \times 2 = \1900.00

The tenants' have been successful in their application.

As for the monetary order, I find that the tenant has established a claim for \$1900.00.

The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order

under section 67 for the balance due of \$1950.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$1950.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 20, 2012.

Residential Tenancy Branch